

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

RONALD G. JOHNSON #4532
Chief, Major Crimes Section

WES R. PORTER #7698
CLARE E. CONNORS #7936
Assistant U.S. Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: Wes.Porter@usdoj.gov
Clare.Connors@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00261-01 HG
)	
Plaintiff,)	UNITED STATES' RESPONSE TO
)	MOTION TO WITHDRAW AS COUNSEL;
vs.)	CERTIFICATE OF SERVICE
)	
JAMES TROIANO, (01))	Date: March 29, 2006
also known as:)	Time: 10:00AM
"JOHN KLATT,")	Judge: Hon. Helen Gillmor
)	
Defendant.)	
)	

UNITED STATES' RESPONSE
TO MOTION TO WITHDRAW AS COUNSEL

Comes now the United States of America, through its undersigned attorneys, and hereby files with the Court this Response to Motion to Withdraw as Counsel, filed March 28, 2006.

As this will be Troiano's third attempt to fire his court-appointed attorney, the United States opposes the Motion on

the basis that Troiano is merely "shopping" for an attorney. At the time the Honorable Barry M. Kurren granted the first Motion to Withdraw filed by Troiano's first attorney, Pamela J. Byrne, Esq., Judge Kurren warned Troiano that although he had a right to counsel, he would be limited in any endeavor to cycle through appointed counsel. As to Troiano's second counsel's Motion to Withdraw, this Court is well-aware of what transpired.

If Troiano would like to proceed *pro se*, the United States would recommend that his present counsel, Todd Eddins, Esq., continue to serve as standby counsel. Faretta v. California, 422 U.S. 806, 834, n. 46; see also, McKaskle v. Wiggins, 465 U.S. 168 (1984). If Troiano becomes disruptive in any manner and fails to comply with basic rules of courtroom protocol and procedure, Mr. Eddins could be asked by the Court to take over as primary counsel. United States v. Dujanovic, 486 F.2d 182, 187 (9th Cir. 1973).

In determining whether a knowing and voluntary waiver of counsel is intended by defendant Hardy, the following questions have been approved as adequate measures by which to apprise the defendant of the dangers and disadvantages of self-representation. Lopez v. Thompson, 202 F. 3d 1110, 1117 (9th Cir. 2000); United States v. Davis, 285 F. 3d 378 (5th Cir. 2002); United States v. Erskine, 355 F.3d 1161 (9th Cir. 2004). Accordingly, the United States respectfully requests that the

Court conduct an inquiry that includes the subject matter contained in these questions.

In determining whether to proceed without counsel, does the defendant understand that:

1. The same court rules apply to defendants as to lawyers United States v. Hayes, 231 F.3d 1132 (9th Cir. 2000);
2. The defendant is still required to abide by all procedural rules governing this case (Faretta, 422 U.S. at 834, n. 46);
3. The defendant will receive no special privileges or benefits, and will not be treated any differently by the Court (United States v. Trapnell, 512 F.2d 10, 12 (9th Cir. 1975);
4. The Court will not assist the defendant;
5. The United States is represented by trained prosecutors experienced with criminal law and procedures;
6. If defendant refuses to comply with rules and orders, the Court may order standby counsel to take over.

DATED: March 28, 2006, at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Clare E. Connors
WES R. PORTER
CLARE E. CONNORS
Assistant U.S. Attorney
District of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

Todd W. Eddins
eddins@eddinsdefense.com

March 28, 2006

Attorney for Defendant
JAMES TROIANO

DATED: March 28, 2006, at Honolulu, Hawaii.

/s/ Iris Tanaka